



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 6

Tope-McKay & Associates
23852 Pacific Coast Highway #311
Malibu, CA 90265

COPY MAILED

JUL 17 2002

In re Application of
Aoki et al.
Application No. 10/040,210
Filed: January 2, 2002
Attorney Docket No. BDI001

OFFICE OF PETITIONS

**DECISION GRANTING
PETITION**

This is a decision on the petition filed May 6, 2002, to accord the above-identified application a filing date of January 2, 2002 .

On January 2, 2002, the application was filed.

On February 7, 2002, the Office of Initial Patent Examination mailed a Notice stating that drawings were not present and that a filing date had not been accorded and the filing date would be the date of receipt of drawings.

In response, the present petition was filed alleging that drawings were deposited on January 2, 2002. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "Formal/Informal Drawings 5 Sheet(s)" on January 2, 2002.¹ Petitioner has also submitted a copy of the missing documentation- 5 sheets of drawings.

Upon review of the record, the drawings deposited on January 2, 2002, have not been located. However, the evidence is convincing that the application papers deposited on January 2, 2002, included drawings and that the drawings were subsequently misplaced in the PTO. Therefore, the application is complete and entitled to a filing date of January 2, 2002..

In view of the above, the petition is **granted**. The copy of the 5 pages of drawings submitted with the petition will be used for examination purposes.


A refund of the petition fee of \$130 will be scheduled. The fee for a one month extension of time to submit the petition *and* the \$42 fee owed for an additional claim will not be refunded.

The Notice mailed February 7, 2002, is vacated to the extent it failed to accord the application a filing date and to the extent the Notice stated drawings were omitted.

¹ Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 2, 2002, using the application papers filed on January 2, 2002, and the copy of the 5 pages of drawings filed on May 6, 2002.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy